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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9669]

RIN 1545-BM25

Participation of a Person Described in Section 6103(n) in a Summons Interview Under Section 7602(a)(2) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations modifying regulations promulgated under section 7602(a) of the Internal Revenue Code relating to administrative summonses. Specifically, these temporary regulations clarify that persons with whom the IRS or the Office of Chief Counsel (Chief Counsel) contracts for services described in section 6103(n) and its implementing regulations may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath. These temporary regulations may affect taxpayers, a taxpayer's officers or employees, and any third party who is served with a summons, as well as any other person entitled to notice of a summons. The text of these temporary regulations serves as the text of the proposed regulations (REG-121542-14) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see paragraph (d) of this temporary regulation.

FOR FURTHER INFORMATION CONTACT: A M Gulas at (202) 317-6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

These temporary regulations amend Procedure and Administration Regulations (26 CFR part 301) promulgated under section 7602 of the Internal Revenue Code. These temporary regulations make clear that persons described in section 6103(n) and Treas. Reg. §301.6103(n)-1(a) with whom the IRS or Chief Counsel contracts for services may receive books, papers, records, or other data summoned by the IRS and take testimony of a person who the IRS has summoned as a witness to provide testimony under oath. While IRS officers and employees remain responsible for issuing summonses and developing and conducting examinations, the temporary regulations clarify that contractors are permitted to participate fully in a summons interview. Full participation includes, but is not limited to, receipt, review, and use of summoned books, papers, records, or other data, being present during summons interviews, questioning the person providing testimony under oath, and asking a summoned person's representative to clarify an objection or an assertion of privilege.

The assistance of persons from outside the IRS or Chief Counsel promotes efficient administration and enforcement of laws administered by the IRS, by providing specialized knowledge, skills, or abilities that the IRS officers or employees assigned to the case may not possess. For example, outside persons often assist the IRS in

matters involving transfer pricing. To clarify the role of these outside persons, these temporary regulations expressly provide that when an IRS officer or employee summons a taxpayer or other witness to produce books, papers, records, or other data and/or to give testimony, an outside person hired by the IRS or Chief Counsel authorized to receive returns or return information pursuant to section 6103(n) may receive the summoned books, papers, records, or other data and take the testimony of the witness under oath.

When the IRS hires an outside person to assist an IRS officer or employee to review books and papers, analyze data, or take testimony from a summoned witness, the IRS will ensure that the inherently governmental functions associated with section 7602, for example, deciding whether to issue a summons, deciding whom to summon, what information must be produced or who will be required to testify, and issuing the summons, will still be performed by an IRS officer or employee. The contractors' role will be limited to functions that are not inherently governmental, such as taking testimony by asking questions, reviewing books or papers, or analyzing other data. As a further safeguard, the temporary regulations expressly provide that any contractor that the IRS authorizes to ask questions of a summoned witness testifying under oath must do so in the presence and under the guidance of an IRS officer or employee.

The conclusion that contractors may receive summoned books and papers, analyze data, and question summoned witnesses is consistent with Treas. Reg. §301.7602-2(c)(1)(i)(B) and (c)(1)(ii) Example 2. Under those rules, which implement the provision requiring notice to the taxpayer of contacts by IRS officers or employees with third parties, contractors (in this case appraisers) are treated in the same manner

as IRS officers or employees when they contact industry experts to discuss a taxpayer's business.

The temporary regulations are effective for summons interviews conducted on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The applicability of the temporary regulations will expire on June 16, 2017.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. The IRS has determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the IRS will submit these temporary regulations to the Chief Counsel for Advocacy of the Small Business Administration for comments about the regulations' impact on small business.

Drafting Information

The principal author of these regulations is A M Gulas of the Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7602-1T is added to read as follows:

§ 301.7602-1T Examination of books and witnesses (temporary).

(a) [Reserved]. For further guidance, see §301.7602-1(a).

(b) through (b)(2) [Reserved]. For further guidance, see §301.7602-1(b) through (b)(2).

(b)(3) Participation of a person described in section 6103(n). For purposes of this paragraph (b), a person authorized to receive returns or return information under section 6103(n) and §301.6103(n)-1(a) of the regulations may receive and examine books, papers, records, or other data produced in compliance with the summons and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of the witness summoned by the IRS to provide testimony under oath. Fully participating in an interview includes, but is not limited to, receipt, review, and use of summoned books, papers, records, or other data; being present during summons interviews; questioning the person providing testimony under oath; and asking a summoned person's representative to clarify an objection or assertion of privilege.

(c) [Reserved]. For further guidance, see §301.7602-1(c).

(d) Effective/applicability date. This section applies to summons interviews conducted on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(e) Expiration date. The applicability of this section expires on or before June 16, 2017.

Heather C. Maloy
Acting Deputy Commissioner for Services and Enforcement.

Approved: June 9, 2014

Mark J. Mazur
Assistant Secretary of the Treasury (Tax Policy).

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